Supreme Court of the United States

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IN THE

Supreme Court of the United States

October Term, 1960

No. 440

THE PEOPLE OF THE STATE OF CALIFORNIA on the relation of the City of San Marino; and the CITY OF SAN MARINO,

Respondents,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF LOS ANGELES, CALIFORNIA, a Corporation Sole; REVEREND WM. FOX, Pastor of Saints Felicitas & Perpetua Church, for and on behalf of THE ROMAN CATHOLIC ARCHBISHOP OF LOS ANGELES, a Corporation Sole, and ARCHDIOCESE OF LOS ANGELES EDUCATION & WELFARE CORPORATION, a Corporation,

Petitioners.

CITY OF SAN MARINO, a Municipal Corporation,

Plaintiff and Cross-Defendant in Certain Pleadings,

and

SOPHUS J. PRESS as Building Inspector of the City of San Marino,

Cross-Defendant,

Respondents,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF LOS ANGELES, CALIFORNIA, a Corporation Sole; REVEREND WM. FOX, Pastor of Saints Felicitas & Perpetua Church, for and on behalf of THE ROMAN CATHOLIC ARCHBISHOP OF LOS ANGELES, a Corporation Sole, and ARCHDIOCESE OF LOS ANGELES EDUCATION & WELFARE CORPORATION, a Corporation Sole,

Defendants, Cross-Complainants and Petitioners in Certain Pleadings,

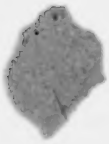
Petitioner.

Petitioners' Reply to Respondents' Brief in Opposition to Petition for Writ of Certiorari.

The Answer to Petition for Writ of Certiorari argues that no federal question was raised or decided below. We point out:

(1) Petitioners' appeal to the City Council of respondent City of San Marino read in part:

"That said ruling denying said application is unreasonably discriminatory and arbitrary, unconstitutional and void . . .



that the refusal to grant said application for variance denied the fundamental rights guaranteed by the 14th Amendment to the Constitution of the United States, and violated the due process of the Constitution of California and the Constitution of the United States." [Rep. Tr. pp. 7-8.]

Petitioners' Cross-Complaint and Petition for Writ of Mandate in Pasa. C-5682 (being 2nd Civ. No. 24244 in the California District Court of Appeal) specifically incorporated these allegations by reference. [See Par. XI, Clk. Tr. p. 20.]

(2) Petitioners' Further and Second Defense in Pasa. C-5072 (being 2nd Civ. No. 23040 in the California District Court of Appeal) read in part as follows:

"That plaintiff has on numerous and diverse occasions, prior to denying Defendants application for variance, granted other Applications for Variance, including some filed by Churches.

"That by reason of said rulings, denials, legislative and administrative acts Plaintiff has unreasonably discriminated against Defendants." [See Par. I, Clk. Tr. p. 15.]

Thus, Petitioners' allegations here clearly go far beyond the "amorphous" pleading in *Ellis v. Dixon*, 349 U. S. 458, 460, and the rule Respondents rely on from *Boyce v. Scott*, 233 U. S. 658, 664-5, is inapplicable.

Finally, it is true that churches enjoy no special privileges as to zoning in California (*Minney v. City of Azusa*, 164 Cal. App. 2d 12, cert. den. 359 U. S. 436). But it does not follow that a particular church may be discriminated against. That the form of discrimination which is taken by the city authorities is the denial of a zoning variance which has been permitted other churches does not shield the discrimination from judicial review nor immunize it from condemnation for violation of constitutional guaranties.

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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